a solution is whether this appeal directly or indirectly involves a question respecting land of the designated value. They have considered the numerous authorities cited, some of them (such as *Oertel* v. *Crocker*)[4] arising under the similar, but not identical, wording of the Judiciary Act, 1903-1965 of Australia. They adopt the words of Lord Tucker in *Meghi Lakhamshi & Brothers* v. *Furniture Workshop*[2] when giving the judgment of the Board in relation to the similar wording of article 3(a) of the Eastern African (Appeal to Privy Council) Order in Council, 1951:

'... it is the value of the property, not the value of the claim or question, which is the determining factor. The presence of the word 'indirectly' seems to require this construction.'"

In the respondent's affidavit in support of the application at paragraph 15 it is affirmed that the value of the vacant possession of the ground floor of the said premises is $27,000 and the business goodwill is $26,000. A report and valuation by Messrs. C.H. Williams Talhar & Wong Sdn. Bhd., a firm of chartered surveyors, valuers and estate agents was also attached to the affidavit. In the light of the foregoing it is the respondent's contention that the subject matter in dispute in this case involves property of the value of $25,000 and upwards and as such it is covered by the second limb of subsection (1) of section 74 of the Courts of Judicature Act, 1974.

Mr. Hepworth, counsel for the appellant maintained that the value of the subject matter in dispute does not exceed $25,000 as the main issue is whether the respondent is a tenant or licensee and the question of property does not come in at all. As for the report and valuation it is submitted that such report is not exhibited to the affidavit. He urged the court not to accept the value given in the report both of vacant possession and the business goodwill.

In consideration of the authorities the court is of the view that to determine whether an appeal shall lie it is pertinent to consider whether the appeal involves, directly or indirectly, property of the value $25,000 or upwards and account should be taken in determining the value the right of the person appealing capable of valuation such as the value of vacant possession of premises in a tenancy dispute and the value of goodwill. With respect to counsel for the appellant, we see no merit in the appellant's contention that the subject matter in dispute is not of sufficient value for purposes of appeal to H.M. Yang di-Pertuan Agong.

It is true that the appellant has in his affidavit made a general denial of the value given in the valuation report but substantially there is no real challenge to the value submitted by the respondent. Leave is therefore granted to the respondent to appeal to H.M. Yang di-Pertuan Agong on the usual terms.

On the question of stay of execution it is I think settled law that the granting of such a stay is a matter of the court's discretion, and it is true that the exercise of such discretion must be founded upon established judicial principles. One of the determining factors that calls for consideration is whether by not making an order to stay of the execution it would make the appeal if successful, nugatory in that it would deprive an appellant of the results of the appeal. How pertinent that factor would be may vary according to the circumstances of each particular case.

In the instant case it is the considered judgment of this court that the respondent ought to be granted stay of execution to maintain the *status quo* so as not to deprive him, if successful, the result of his appeal. It is, however, felt that there should not be a stay of execution in respect of the sum of $8,500 mesne profit for the period up to May 31, 1978, and the order for mesne profit at the rate of $300 per month with effect from June 1, 1978.

Lee Hun Hoe C.J. (Borneo) and **Wan Suleiman F.J.** concurred.

Order accordingly.

Solicitors: *Allen & Gledhill; R.K. Sharma & Co.*

MAJLIS PERBANDARAN PULAU PINANG v. BOEY SIEW THAN & ORS.

[F.C. (Raja Azlan Shah C.J. (Malaya), Chang Min Tat & Syed Othman F.JJ.) December 6, 1978 & March 21, 1979]

[Penang — Federal Court Civil Appeal Nos. 29 & 30 of 1978]

Practice and Procedure — Public nuisance — Whether local authority can institute action for damages and injunction — Whether interlocutory injunction can be granted — Municipal Ordinance (S.S. Cap. 133), ss. 144(7), 144(9) & (11) — Municipal Bye-Laws 2(i) and 27(i) — Government Proceedings Ordinance, 1956, s. 8(1) — Specific Relief Act, 1950 (Act 137), ss. 50, 51 and 54 — Local Government Act, 1976 (Act 171), ss. 13, 80 and 82(1).

This was an appeal from the decision of the High Court (reported in [1978] 2 M.L.J. 156). The respondents were alleged to have made structural alterations to a building and to have used it as a restaurant without the approval or the licence of the local authority. The appellants, the local authority, brought an action for an injunction to restrain the respondents from illegally operating the eating house and damages for public nuisance. They also applied for and obtained *ex-parte* injunctions restraining the respondents from operating the said eating house until trial of the actions. The respondents applied to strike out the actions and also to dissolve the *ex-parte injunctions*. The High Court upheld their applications, and ordered that the actions be dismissed with costs and the *ex-parte* injunctions be dissolved. The appellants appealed.

Held, allowing the appeal: (1) section 80 of the Local Government Act, 1976 is clear and releases a local authority from the obligation to sue on a relator action, so that it can take action in its own name to abate a public nuisance on public or private premises within its own area in protection of the public interest;

(2) in this case there were serious questions to be tried and there was a reasonable prospect of the trial court granting an injunction, but if breaches of the law were allowed to continue, it would be impossible or useless to grant it at the trial. In such circumstances it would be right to grant an urgent relief of an interlocutory nature which worked in the interest of justice and also in the interests of the proper functioning of the appellants as a local authority.

Cases referred to:-

(1) *Tottenham Urban District Council* v. *Williamson & Sons Ltd.* [1896] 2 Q.B. 353, 354.

(2) *Nuneaton Local Board* v. *General Sewage Co.* (1875) L.R. 20 Eq. 127, 133.

(3) *Prestatyn Urban District Council* v. *Prestatyn Raceway Ltd. & Anor.* [1970] 1 W.L.R. 34, 44.

(4) *Solihull Metropolitan Borough Council* v. *Maxfern Ltd. & Anor.* [1977] 1 W.L.R. 127.

(5) *Assa Singh* v. *Mentri Besar, Johore* [1969] 2 M.L.J. 30, 48.

(6) *American Cyanamid* v. *Ethicon Ltd.* [1975] A.C. 396.

(7) *Charles Ostenton and Co.* v. *Johnston* [1942] A.C. 130, 138-139.

(8) *Evans* v. *Bartlam* [1937] A.C. 473.
(9) *Gardner* v. *Jay* (1885) L.R. 29 Ch. D. 58.
(10) *S. Sivaperuman* v. *Heach Seok Yeong Realty Sdn. Bhd.* [1979] 1 M.L.J.
(11) *Attorney-General* v. *Harris* [1961] 1 Q.B. 74.
(12) *Attorney-General* v. *Melville Construction Co.* (1968) 67 L.G.R. 309.
(13) *Attorney-General* v. *Chandry* [1971] 1 W.L.R. 1614.
(14) *Attorney-General* v. *Times Newspaper* [1974] A.C. 273.

FEDERAL COURT.

Ghazi Ishak for the appellants.

Jag-Jit Singh for respondents in Civil Appeal No. 29/78.

R. Rajasingam (*Subash Chandran* with him) for respondents in Civil Appeal No. 30/79.

Raja Azlan Shah C.J. (Malaya) (delivering the judgment of the Court): These two appeals, heard togetner and the subject of one judgment, were from the decisions and orders of the High Court in Penang (reported in [1978] 2 M.L.J. 156) refusing interim injunctions and striking out both the actions under Order 25 rule 3 as disclosing no reasonable cause of action. We allowed them on December 6, 1978. We now proceed to give our reasons.

The facts in Federal Court Civil Appeal No. 29 of 1978 are as follows. The appellants who are the local authority are concerned with the illegal activities of the respondents. In their statement of claim dated December 15, 1977 they allege that the respondents, who are in possession and control of the dwelling-house at No. 42, Jalan Tanjong Tokong, Pulau Pinang, have on September 21, 1977 applied to them under section 144(7) of the Municipal Ordinance (Cap. 133) to convert it into an eating-house, but without waiting for approval carried out structural alterations which in the absence of an approval is an offence punishable under section 144(9) of the said Ordinance. To convert the dwelling-house into an eating-house is by virtue of section 144(11)(e) of the said Ordinance deemed to "erect a building". They also complain that the respondents are operating the said eating-house known as the "Restaurant Jade Dragon" since November 10, 1977 without a licence duly issued by them under by-law 2(i) of the Council's by-laws with respect to bakeries, eating-houses and places where food or drink is sold or prepared or stored for sale, an offence punishable under by-law 27(i). Enforcement notices dated October 6, 1977 and November 14, 1977 requiring the respondents to "stop work of carrying out alterations and additions and conversion of the dwelling-house without prior approval, demolish all unauthorised structures and revert to previous use" were ignored. They therefore seek an injunction to restrain the respondents from illegally operating the said eating-house and damages for public nuisance which they have a statutory right to abate otherwise than upon the intervention of the Attorney-General by virtue of sections 13 and 80 of the Local Government Act, 1976 (Act 171).

In Federal Court Civil Appeal No. 30/78 the facts are similar. The respondents who are in possession and control of the building at No. 180-N, Burmah Road, Pulau Pinang, have since October 10, 1977, converted it into an eating-house in breach of by-laws 2(i) and 27(i) of the Council's by-laws. Enforcement notice issued on the same day was served on the respondents on October 17 but was ignored. On December 14, 1977 the appellants seek similar remedy.

On December 15, 1977 the appellants obtained *ex parte* injunctions restraining the respondents from operating the said eating-house until trial of the actions. On December 28, 1977 and January 12, 1978 the respondents moved the court to strike out the actions and also to dissolve the *ex parte* injunctions. On February 9, 1978 the court upheld their applications.

It is necessary to reproduce the relevant provisions of the law. Section 144(7) of the Municipal Ordinance is as follows:

> No person shall commence any building operations involving the erection of a building . . . unless —
> (a) he has given to the Commissioners four days' notice of his intention to commence or resume such operations with particulars of the intended works; and
> (b) a plan and specification of the building have been approved by the Commissioners or the President within one year before the date of the notice."

Section 144(11)(e) enacts:

> "For purposes of this section and of sections 144B, 145 and 146 a person shall be deemed to erect a building who —
> (a) converts to other purposes a house originally constructed as a dwelling-house."

Section 144(9) of the Municipal Ordinance is as follows:

> "Any owner who fails to comply with the requirements of such notice shall be liable to a fine not exceeding ten dollars for each day during which such non-compliance continues, and the Commissioners may themselves cause the work to be done and the owner shall pay to the Commissioners the cost and expense thereof."

By-law 2(i) of the Council's by-laws reads as follows:

> "No person shall keep any aerated water or ice factory, bakery, cookshop or eating-house within the limits of the Municipality without a licence therefor issued under these by-laws."

Section 27(i) of the Council's by-laws lays down as follows:

> "any person who uses or causes or permits to be used any premises in contravention of by-law 2 shall be guilty of an offence."

The issues which fall for consideration in these appeals are the same issues as those which the trial judge below had to resolve. First, whether the cause of action is wrongfully instituted and secondly, whether interlocutory relief is an appropriate remedy at this stage of the proceedings.

It is common ground that the cause of action is founded on public nuisance and that the action of the respondents constitutes non-compliance with the law and has to be restrained. The forefront of the argument below and before us is whether the appellants can institute proceedings seeking an injunction to restrain a public nuisance without the relation of the Attorney-General because section 8(1) of the Government Proceedings Ordinance, 1956, it is argued, directs that only the Attorney-General, or two or more persons having obtained his written consent, may in-

stitute such proceedings. Section 8(1) is in these terms:

"In the case of a public nuisance the Attorney-General, or two or more persons having obtained the consent in writing of the Attorney-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case."

We all know the reason behind the salutory provisions of the section which is nothing more than a restatement of the English common law that when anyone complains of a public nuisance he must obtain the fiat of the Attorney-General for proceedings by way of information, unless he can show that the nuisance which he complains is the cause of special damage to himself, and so a ground for action: see *Tottenham Urban District Council* v. *Williamson & Sons Ltd.*[1] It is sufficient to say that the principle was laid down to avoid multiplicity of actions or the institution of actions which may well be of no proper concern for the weighty consideration of the courts of law. The argument was put in this way as long ago as in 1535 in a case in the Year Books which was translated by C.H.S. Fifoot in History and Sources of the Criminal Law (1949), page 98 as follows:

"If one of those injured were allowed to sue, a thousand might do so;"

and that was considered intolerable. *Blackstone* in his Commentaries (17 ed. Book IV page 166) said:

"...It would be unreasonable to multiply suits, by giving every man a separate right of action, for what damnifies him in common only with the rest of his fellow-subjects."

But does this principle prevent the present appellants who are the local authority and statutorily entrusted with the task of maintaining the municipal law of their area for the common good of all from seeking an injunction in their own name to restrain a public nuisance within their own area? Counsel on behalf of the appellants submitted that there is a statutory exception for a local authority to abate a public nuisance without the intervention of the Attorney-General and he referred us to the provisions of section 80 of the Local Government Act, 1976, which reads:

"The local authority shall take steps to remove, put down and abate all nuisances of a public nature within the local authority area or public or private premises and may proceed at law against any person committing any such nuisance for the abatement thereof and for damages."

We take the view that the provisions of section 80 mean what it says, namely that the appellants as the local authority of the area are invested with statutory powers and duties to "take steps to remove, put down and abate a public nuisance" whether on public or private premises within their area, and they can institute legal proceedings in their own corporate name by virtue of section 13 of the Local Government Act, 1976 which reads as follows:

"Every local authority shall be a body corporate and shall have perpetual succession and a common seal, which may be altered from time to time, and may sue and be sued, acquire, hold and sell property and generally do and perform such acts and things as bodies corporate may by law do and perform."

It is argued on behalf of the appellants that Parliament intended to modify the principle applicable to the *locus standi* of private individuals to abate a public nuisance in their own name and not on the relation of the Attorney-General, by removing the requirement that such a litigant suffer special damage. We have no doubt that the section goes that far. Sir James Bacon V.C. as long ago as in 1875 prophesied that "the day may possibly come when the question, whether a corporation, created by statute to discharge such duties as a local board of health are created to fulfil, may or may not file a bill to restrain the infringement of a public right, with or without the Attorney-General, will have to be decided"; see *Nuneaton Local Board* v. *General Sewage Co.*[2] quoted by Golf J. in *Prestatyn Urban District Council* v. *Prestatyn Raceway Ltd. & Anor.*[3] In England that day has arrived with the coming into force of the U.K. Local Government Act, 1972 on April 1, 1974. Section 222(i) of the Act reads:

"Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area —

(a) they may prosecute or defend in any legal proceedings and, in the case of civil proceedings, may institute them in their own name...."

That section has been judicially considered and applied in *Solihull Metropolitan Borough Council* v. *Maxfern Ltd. & Anor.*[4] where Oliver J. held that the Council had *locus standi* to be awarded an injunction to restrain the use of an unlawful Sunday market.

In this country, the Local Government Act, 1976 is a major milestone in administrative history, and one of its notable results in the disappearance of the relator action. It is to be noted that the Act is not merely a consolidating Act, but also an amending Act which gives a local authority by virtue of section 80 (read with section 13) a wide new enabling power and duty altering the law and removing the question of standing from the discretion of the Attorney-General where it has hitherto pursuant to section 8(1) of the Government Proceedings Ordinance, 1956 rested. The remedy afforded by the section is a remedy primarily in protection of the class of persons affected by the conduct of the respondents. In this sense it is in protection of the public against their illegal activities. The appellants' standing rests on the contention that the essential nature of their case is one for the protection of the public interest. In our view, the section speaks so plainly that it is clear from its terms that Parliament had intended to release a local authority from the obligation to sue on a relator action and not in their own name, where they are taking proceedings at law to abate a public nuisance on public or private premises within their own area in protection of the public interest. We think this principle is relevant: "Where a power is coupled with a duty, the power cannot be divorced from the duty. They are inseparable; whoever exercises the power, he it must be who has to perform the duty, which is a condition precedent for the exercise of the power": see *Assa Singh* v. *Mentri Besar, Johore.*[5]

We now turn to the vexed question whether this is a case in which an interlocutory injunction should issue.

The main argument has centred on the proposition that an injunction cannot be granted if an equally

efficacious relief can be obtained. Section 54(i) of the Specific Relief Act, 1950 (Act 137) reads:

"An injunction cannot be granted — when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust;"

The summary procedure available to the appellants to abate a nuisance pursuant to section 82(1) of the Local Government Act, 1976, it is argued, is an equally efficacious relief as that of an injunction to restrain the respondents from flouting the law. Section 82(1) of the Act is as follows:

"On the receipt of any information respecting the existence of a nuisance liable to be dealt with summarily under this Act, the local authority shall, if satisfied of the existence of a nuisance, serve a notice on the person by whose act, default or sufferance the nuisance arose or, if such person cannot be found, on the occupier or owner of the premises on which the nuisance exists, requiring him to abate the same within the time specified in the notice and to execute such works and do such things as are necessary for that purpose and, if the local authority thinks it desirable, specifying any works to be executed."

The question whether an equally efficacious relief can be obtained by any other usual mode of proceeding within the meaning of section 54(i) of the Specific Relief Act is a question of fact to be determined in each case on its own circumstances and no hard and fast rule can be laid down in the matter. For the appellants it is argued that the conduct of the respondents is very plain and that they will continue to flout the law unless immediately restrained and further it is urged that any fines payable under the law are unlikely to deter them from operating the said eating-house in view of the profits they are making.

At the interlocutory stage, it is, we think, important to bear in mind that it is inadvisable to express detailed or concluded views on the evidence relating to the issues in dispute. The application before the learned judge below for an interlocutory injunction is based on a breach of the planning permission law under Cap 133 and the Council's by-laws and the clear duty to restrain such continued breach pending the determination of the respondents' application for structural alterations and the issue of an eating-house licence and to preserve the *status quo*. In order for the appellants to be entitled to interlocutory relief, it is necessary for the court to be satisfied that there are serious questions to be tried in the sense explained by the House of Lords in *American Cyanamid* v. *Ethicon Ltd.*[6] These no doubt will vary from case to case. If the court is satisfied that there are serious and difficult questions of law or fact involved in the proceedings, it will not undertake a preliminary trial of the action in order to forecast a probable result, but if the appellants have a real prospect of ultimate success, it will then proceed to consider the balance of convenience, viz., whether the inconvenience or injury which the appellants will be likely to suffer if an injunction is refused outweighs or is outweighed by, the injury which the respondents will suffer if an injunction is granted. These two issues are distinct and separate and the court must so consider them.

Now, the court is given jurisdiction to grant an interlocutory injunction under sections 50 and 51(1) of the Specific Relief Act which read:

"Preventive relief is granted at the discretion of the court by injunction, temporary or perpetual.

Temporary injunctions are such as are to continue until a specified time, or until the further order of the court. They may be granted at any period of a suit, and are regulated by the law relating to civil procedure."

These words confer a judicial discretion of the widest kind upon the court. It is not to be arbitrarily exercised but must be done judicially in accordance with principle. We think that the principle applicable when the appeal is from the exercise of discretion is best stated by Viscount Simon L.C. in *Charles Ostenton and Co.* v. *Johnston*: [7]

"The law as to the reversal by a court of appeal of an order made by the judge below in the exercise of his discretion is well-established, and any difficulty that rises is due only to the application of well-settled principles in an individual case. The appellate tribunal is not at liberty merely to substitute its own exercise of discretion for the discretion already exercised by the judge. In other words, appellate authorities ought not to reverse the order merely because they would themselves have exercised the original discretion, had it attached to them, in a different way. But if the appellate tribunal reaches the clear conclusion that there has been a wrongful exercise of discretion in that no weight, or no sufficient weight, has been given to relevant considerations such as those urged before us by the appellant, then the reversal of the order on appeal may be justified. This matter was elaborately discussed in the decision of the House in *Evans* v. *Bartlam*,[8] where the proposition was stated by my noble and learned friend, Lord Wright as follows: 'It is clear that the Court of Appeal should not interfere with the discretion of a judge acting within his jurisdiction unless the court is clearly satisfied that he was wrong. But the court is not entitled simply to say that if the judge had jurisdiction and had all the facts before him, the Court of Appeal cannot review his order unless he is shown to have applied a wrong principle. The court must if necessary examine anew the relevant facts and circumstances in order to exercise a discretion by way of review which may reverse or vary the order. Otherwise in interlocutory matters the judge might be regarded as independent of supervision. Yet an interlocutory order of the judge may often be of decisive importance on the final issue of the case, and one which requires a careful examination by the Court of Appeal. Thus in *Gardner* v. *Jay*[9] Bowen L.J. in discussing the discretion of the judge as regards mode of trial says:

'That discretion, like other judicial discretions, must be exercised according to common sense and according to justice, and if there is a miscarriage in the exercise of it it will be reviewed'."

We have given careful consideration to the primary judgment and we feel that on the whole the learned judge did fall into error in discharging his task in that he did not direct his mind at all to the two distinct and separate issues as enunciated by the House of Lords in *American Cyanamid* case, *supra*. The learned judge having thus erred in his approach, it is now for this court to come to its own conclusion as to how, in this case, the relevant discretion should be exercised.

It cannot be regarded as an absolute and inflexible rule that the court will not grant interlocutory relief before trial. Each case must depend on its own facts. Thus the court has jurisdiction to grant it in exceptional circumstances. See the judgment of this court in *S. Sivaperuman* v. *Heah Seok Yeong Realty Sdn. Bhd.*[10]

We feel that in this case there are serious questions to be tried in the sense that if the evidence remains as it is there is a probability that at the trial of the action the appellants will be entitled to relief. How strong the probability needs must depend, no

doubt, upon the nature of the rights they assert and the practical consequences likely to flow from the order they seek. In the serious and urgent situation faced by the appellants there are reported cases which have held that an injunction will be awarded to restrain repeated breaches of regulatory legislation where the sanctions of the criminal law have proved inadequate. In *Attorney-General* v. *Harris*[11] it was held that persistent and deliberate flouting of the law was in itself a grave and serious injury to the public, which warranted the grant of an injunction where the monetary penalties imposed by statute were ineffective to secure compliance with the law. An injunction has also been awarded against individuals breaking or proposing to break the criminal law where the matter is very urgent, notwithstanding that the criminal courts have not yet dealt with this issue: see *Attorney-General* v. *Melville Construction Co.*[12] (tree preservation order); *Attorney-General* v. *Chaudry*[13] (breach of fire safety law); *Attorney-General* v. *Times Newspapers Ltd.*[14] (where publication of article would have been criminal contempt of court).

The second inquiry is directed to whether, on the balance of convenience, injunctive relief should be granted.

After considering the facts so far as they appear from the affidavits, and the authorities, we are of the opinion that in all the circumstances of the case, there is a reasonable prospect of the trial court granting an injunction, whereas if breaches of the law are allowed to continue, it will be impossible or useless to grant it at the trial. In such circumstances we consider it right to grant an urgent relief of an interlocutory nature which works in the interest of justice and also in the interests of the proper functioning of the appellants as a local authority. The case is brought by them solely for the protection of the public interest in their area and in the case where relief is brought by a local authority in the public interest the court gives weight to such interest in deciding where the balance of convenience lies.

Appeal allowed.

Solicitors: *Presgrave & Matthews; Jag-Jit Singh & Co.; Mathuram & Co.*

VOON AH SHOON v. PUBLIC PROSECUTOR

[A.C.J. (Yusoff J.) June 7, 1977 & January 30, 1978]
[Kuching — Criminal Appeal No. K. 23 of 1976]

Bribery and Corruption — Corruption — "Agent" — Meaning of — Prevention of Corruption Act, 1961, s. 4(c) — Criminal Procedure Code (F.M.S. Cap. 6), ss. 173, 176, 278 and 307.

The appellant in this case was an Administrative Assistant in the Education Department, Sarawak. He was in charge of tenders and supplies. On July 1, 1971 the department issued purchase orders for the supply of articles to a college. Before the said equipment had been supplied, the appellant instructed the firm's proprietor to submit bills in respect of the said equipment. On December 13, 1971 the appellant, though knowing that the equipment had not been received by the college certified the receipts on both the local purchase orders to the effect that the articles in the local purchase orders had been handed to him in good condition. After certifying the said orders, the appellant handed them to the accounts clerk in his department for payment of the equipment allegedly received by him. On December 20, 1971 the said proprietor received payment for the said equipment alleged to have been supplied to the college. The appellant was charged and convicted for having committed an offence under section 4(c) of the Prevention of Corruption Act, 1961. He appealed.

Held, dismissing the appeal: (1) the definition of the word "agent' in section 2 of the Prevention of Corruption Act which deals with criminal liability of an individual cannot be equated with the definition of the same word in the Contracts Act which deals with civil rights and liabilities of a person. Both laws are not *in pari materia* and the position and liability of an agent in each respective law are different altogether;

(2) the learned magistrate had correctly held that the agent in this case was an agent, being a person serving under a public body as defined in section 2 of the Prevention of Corruption Act and "public body" would include the Government of Malaysia.

Cases referred to:-

(1) *R.* v. *Barrett (George)* [1976] 3 All E.R. 895.
(2) *Lai Fook Kee* v. *Public Prosecutor* [1970] 1 M.L.J. 134.
(3) *Sage* v. *Eicholz* [1919] 2 K.B. 171.
(4) *Public Prosecutor* v. *A.G. Kyle-Little & Anor.* [1971] 1 M.L.J. 125.
(5) *In re London & Globe Finance Corporation Ltd.* [1903] 1 Ch. 728.

CRIMINAL APPEAL.

K.C.I. Reddy for the appellant.

Abdul Hamid bin Mohammed Yusof (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yusoff J.: The appellant, Voon Ah Shoon, appeals against his convictions and sentence on the following two charges under section 4(c) of the Prevention of Corruption Act, 1961.

"First Charge

That you, on December 13, 1971, sometime before noon, at the Education Department (Headquarters), Kuching, in the First Division, in the State of Sarawak, being an agent of the Government of Malaysia, to wit, Administrative Assistant attached to the Education Department, Sarawak did knowingly use with intent to deceive your principal a document, to wit, Local Purchase Order No. 251308 dated July 1, 1971, in respect of which your principal is interested and which document contains statements which are false in material particulars, namely, receipt certificate whereby you certified that the articles quoted in the said Local Purchase Order No. 251308 have been handed to you in apparent good condition whereas none of such articles had been supplied, either to you or to Batu Lintang Training College, Kuching, and which to your knowledge is intended to mislead your principal and that you have thereby committed an offence under section 4(c) and punishable under section 4 of the Prevention of Corruption Act, 1961, Law of Malaysia.

Second Charge

That you, on December 13, 1971, sometime before noon, at the Education Department (Headquarters), Kuching, in the First Division, in the State of Sarawak, being an agent of the Government of Malaysia, to wit, Administrative Assistant attached to the Education Department, Sarawak did knowingly use with intent to deceive your principal a document, to wit, Local Purchase Order No. 251309 dated July 1, 1971, in respect of which your principal is interested and which document contains statements which are false in material particulars namely, receipt certificate whereby you certified that the articles quoted in this Local Purchase Order No. 251309 have been handed to you in apparent good condition whereas only 8 items thereof have been supplied to the Batu Lintang Training College, Kuching, on July 28,